

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

7 YOUTOO TECHNOLOGIES, INC., ) 3:17-cv-00414-LRH-WGC  
8 Plaintiff, )  
9 vs. )  
10 TWITTER, INC., ) Re: ECF Nos. 2,6  
11 Defendant. )

13 Before the court is Defendant Twitter, Inc.'s Motion to Seal. (ECF No. 2.) Twitter seeks an order  
14 sealing portions of its Motion to Compel Strategic Gaming Management, LLC to Produce Documents  
15 Pursuant to Federal Rule of Civil Procedure 45 (ECF No.1), as well as Exhibits 2 and 3 to the  
16 Declaration of Laura Miller filed in support of that motion.

17 Also before the court is a second Motion to Seal filed by Twitter, where Twitter seeks an order  
18 sealing portions of its reply brief filed in support of the motion to compel, as well as Exhibits 13-16 of  
19 the Declaration of Laura Miller filed in support of the reply. (ECF No. 6.)

20        “Historically, courts have recognized a general right to inspect and copy public records and  
21 documents, including judicial records and documents.” *See Kamakana v. City and County of Honolulu*,  
22 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted). “Throughout our  
23 history, the open courtroom has been a fundamental feature of the American judicial system. Basic  
24 principles have emerged to guide judicial discretion respecting public access to judicial proceedings.  
25 These principles apply as well to the determination of whether to permit access to information contained  
26 in court documents because court records often provide important, sometimes the only, bases or  
27 explanations for a court’s decision.” *Oliner v. Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014)  
28 (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983)).

1        Documents that have been traditionally kept secret, including grand jury transcripts and warrant  
2 materials in a pre-indictment investigation, come within an exception to the general right of public  
3 access. *See Kamakana*, 447 F.3d at 1178. Otherwise, “a strong presumption in favor of access is the  
4 starting point.” *Id.* (internal quotation marks and citation omitted). “The presumption of access is ‘based  
5 on the need for federal courts, although independent—indeed, particularly because they are  
6 independent—to have a measure of accountability and for the public to have confidence in the  
7 administration of justice.’” *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th  
8 Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016) (quoting *United States v. Amodeo (Amodeo II)*, 71  
9 F.3d 1044, 1048 (2nd Cir. 1995); *Valley Broad Co. v. U.S. Dist. Court-D. Nev.*, 798 F.2d 1289, 1294  
10 (9th Cir. 1986)).

11        There are two possible standards a party must address when it seeks to file a document under  
12 seal: the compelling reasons standard or the good cause standard. *See Center for Auto Safety*, 809 F.3d  
13 at 1096-97. Under the compelling reasons standard, “a court may seal records only when it finds ‘a  
14 compelling reason and articulate[s] the factual basis for its ruling, without relying on hypothesis or  
15 conjecture.’” *Id.* (quoting *Kamakana*, 447 F.3d at 1179). “The court must then ‘conscientiously balance[  
16 ] the competing interests of the public and the party who seeks to keep certain judicial records secret.’”  
17 *Id.* “What constitutes a ‘compelling reason’ is ‘best left to the sound discretion of the trial court.’” *Id.*  
18 (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599 (1978)). “Examples include when a court  
19 record might be used to ‘gratify private spite or promote public scandal,’ to circulate ‘libelous’  
20 statements, or ‘as sources of business information that might harm a litigant’s competitive standing.’”  
21 *Id.* (quoting *Nixon*, 435 U.S. at 598-99).

22        *Center for Auto Safety* described the good cause standard, on the other hand, as the exception to  
23 public access that had been applied to “sealed materials attached to a discovery motion unrelated to the  
24 merits of a case.” *Id.* (citing *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213-  
25 14 (9th Cir. 2002)). “The ‘good cause language comes from Rule 26(c)(1), which governs the issuance  
26 of protective orders in the discovery process: ‘The court may, for good cause, issue an order to protect  
27 a party or person from annoyance, embarrassment, oppression, or undue burden or expense.’” *Id.* (citing  
28 Fed. R. Civ. P. 26(c)).

1 The Ninth Circuit has clarified that the key in determining which standard to apply in assessing  
2 a motion for leave to file a document under seal is whether the documents proposed for sealing  
3 accompany a motion that is “more than tangentially related to the merits of a case.” *Center for Auto*  
4 *Safety*, 809 F.3d at 1101 (9th Cir. 2016). If that is the case, the compelling reasons standard is applied.  
5 If not, the good cause standard is applied.

6 Here, in its first motion, Twitter seeks to file under seal portions of its motion to compel, as well  
7 as Exhibits 2 and 3 to a declaration filed in support of that motion because the documents are designated  
8 confidential in a protective order entered into in the underlying patent infringement lawsuit pending in  
9 the Northern District of Texas, and the portions of the motion they seek to seal describe those  
10 confidential documents. The motion to compel does not go to the merits of the action itself, but pertains  
11 to third-party discovery. Therefore, the “good cause” standard applies.

12 In the second motion, Twitter again seeks to file under seal portions of its reply brief and exhibits  
13 filed in support of the reply that pertain to documents designated as confidential pursuant to a protective  
14 order entered into in the underlying patent infringement action.

15 The protective order entered into in the underlying patent infringement action allows the parties  
16 to designate as confidential documents that contain trade secrets or commercial information that are not  
17 publicly known and are of technical or commercial advantage to the possessor, or other information  
18 required by law or agreement to remain confidential, including confidential research and development,  
19 financial, technical, marketing or other information.

20 Rule 26 allows the court to protect “trade secret[s] or other confidential research, development  
21 or commercial information[.]” As such, the court finds that good cause exists to seal the portions of the  
22 motion to compel, Exhibits 2 and 3 filed in support of the motion, the portions of the reply brief, and  
23 Exhibits 13-16 filed in support of the reply. Therefore, Twitter’s motions to seal (ECF Nos. 2 and 6) are  
24 **GRANTED** and those documents shall be **SEALED**.

25 DATED: August 7, 2017.

William G. Cobb